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NO. ——

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

EDWARD DEAN MARTIN,
Petitioner,

v.

STATE OF GEORGIA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF GEORGIA

BRIEF IN OPPOSITION FOR THE RESPONDENT

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QUESTION PRESENTED

Where the State's scientific test did not link the sperm sample to Petitioner, did the trial court abuse its discretion in not having the sperm sample tested by Petitioner's expert?

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PART ONE

STATEMENT OF THE CASE

On the night of April 11, 1978, Mrs. Billy Baker was driving home to Hinesville from Jesup. She had a flat tire

and Petitioner Edward Dean Martin, by his own admission, stopped and changed the tire for her. At this point, the facts according to the victim and Petitioner diverge. Mrs. Baker stated that Petitioner lured her out of her car and attacked her. She said that he then forced her back into the car and raped her.

Petitioner claimed that he changed the tire and then proceeded to go home. He denied raping Mrs. Baker or even having intercourse with her.

The victim, when she got home, informed her family that she had been raped. They then took her to the hospital where she was examined and samples taken as the instructions of a "rape kit" required. The rape kit

was sent to the State Crime Laboratory and it was determined that there were sperm in the sample taken from the victim's vagina, indicating that intercourse had occurred.

Just three weeks before trial and some four months after arrest, Petitioner filed a motion to test independently the physical evidence the State intended to introduce at trial. The motion was denied. The State never introduced the sperm test of the microanalyist into evidence because the analyst could not link the sperm to any specific individual.

At the first trial Petitioner was convicted of rape and aggravated assault, but the convictions were reversed on another ground. Martin v. State, 151 Ga. App. 9, 14-15, 258 S.E.2d 711 (1979).

However, the appellate court held that it was not error to deny the motion to test independently the sperm sample. Id. at 13-14.

Prior to the second trial, Petitioner moved to test independently the sperm sample. The motion was denied. At trial the State's evidence was that the sperm sample was evidence only that intercourse had taken place, but that there was no scientific evidence linking the sperm to Petitioner.

Petitioner was convicted of rape, and his conviction was affirmed on direct appeal. Martin v. State, 157 Ga. App. 304, ___S.E.2d ___ (1981). The Georgia Supreme Court denied a writ of certiorari.

PART TWO

REASONS FOR NOT GRANTING THE WRIT

WHERE THE STATE'S SCIENTIFIC TEST DID NOT LINK THE SPERM SAMPLE TO PETITIONER, THE EVIDENCE WAS NOT CRITICAL AND THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN NOT HAVING THE SPERM SAMPLE TESTED BY PETITIONER'S EXPERT.

In Gray v. Rowley, 604 F.2d 382 (5th Cir. 1979), cert. den., 445 U.S. 944 (1980), a case with an almost identical factual situation to Petitioner's, the Fifth Circuit Court of Appeals held that the evidence sought to be independently examined (rape victim's clothes with semenal fluid

on them) was not critical evidence because there was no evidence presented at trial linking the semenal fluid to the accused. Therefore, the failure to allow an independent test of the clothing did not violate any of the accused's due process rights. Id.

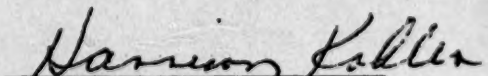
At Petitioner's trial, it was undisputed that Petitioner was at the scene of the rape. The critical testimony was whether or not the victim, who testified that Petitioner actually raped her, or Petitioner, who testified that he merely changed the tire on her car and left the scene, was credible. Obviously, the jury resolved the credibility determination in favor of the rape victim. Therefore, the rest of the sperm sample was not critical evidence, and the failure of the trial court to allow an

independent test by Petitioner's expert was not a deprivation of Petitioner's due process rights.

CONCLUSION

The petition for a writ of certiorari should be denied because no sufficient reasons for review have been set forth by Petitioner.

Respectfully submitted,



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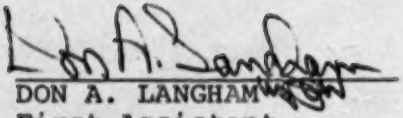

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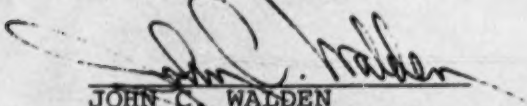

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CERTIFICATE OF SERVICE

I, Harrison Kohler, Attorney of Record for the Respondent, and a member of the Bar of the Supreme Court of the United States, certify that in accordance with the Rules of the Supreme Court, I have this day served true and correct copies of this Brief for the Respondent in Opposition upon the Petitioner, by depositing copies of this Brief in the United States mail, with adequate postage and addressed to:

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This 2nd day of July, 1981.

Harrison Kohler
HARRISON KOHLER